

McCUE LAW FIRM, P.C.

1085 HELENA AVENUE
POST OFFICE BOX 4416
HELENA, MONTANA 59604

STEPHEN R. McCUE
sr_mccue@yahoo.com
MARY KELLY McCUE
mary.mccue@gmail.com

Exhibit No. 6
Date 1-16-09
Bill No. SB 52

406/442-2220
FAX 406/449-6038

January 16, 2009

TO: Members, Senate Public Health, Welfare, and Safety Committee
FR: Mary K. McCue, Esq., representing the Montana Medical Association

The members of the Montana Medical Association oppose SB 52 because the legislation unnecessarily duplicates provisions of the federal anti-kickback laws and Stark Law already in effect and offers no new protections to Montana health care patients.

MMA opposes SB 52 for the following reasons:

- Presently federal law contained in the anti-kickback laws and Stark Act, which apply to the Medicare and Medicaid programs, regulate unethical referrals related to the delivery of health care services. The federal laws are complex, far-reaching, and contain significant penalties for a violation of their provisions. SB 52 unnecessarily replicates many of these federal provisions.
- The bill provides that the exemptions allowed under federal law would be allowed under SB 52. Standard physician employment contracts with large community hospitals would direct the physician to refer patients to the hospital or other physicians employed by the hospital unless certain other conditions exist, i.e., the patient expresses a preference, the patient's insurer determines the provider, or the referral is not in the patient's best interests. This type of employment contractual provision is allowable under federal law and therefore also exempt under SB 26. Thus, this bill does not provide any additional protection for patients.
- The bill delegates enforcement to the Board of Medical Examiners and other health professional licensure boards which would be charged with making factual findings regarding a "conflict of interest" as defined in section 4, subsection (3). This generally is beyond the scope of duty and expertise of a licensure board.

For these reasons, we urge "do not pass" on SB 52.